

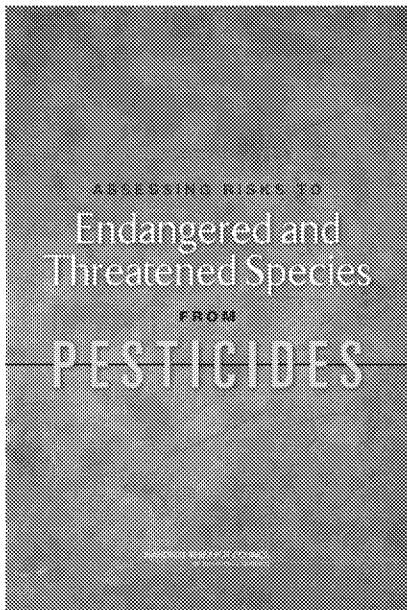
# **Update on ESA Pesticide Consultations**

June 19, 2017

# Background

- **ESA Authority**
  - Section 7(a)(2) of ESA: EPA makes “effects determination” for individual listed species in a biological evaluation (BE):
    - No effect (NE) – no consultation required
      - Overview Document-compliant method (2004): Risk Quotient (RQ) < listed species Level of Concern (LOC) (e.g., GMO-crop “no effect” determinations)
      - NAS-recommended method (2013): No geospatial co-occurrence of pesticide use footprint with listed species range
    - Not likely to adversely affect (NLAA) – informal consultation; concurrence from Services
    - Likely to adversely affect (LAA) – formal consultation including Biological Opinion (BiOp) from Services (jeopardy/no jeopardy determination)
- **Conventional pesticide decisions impacted by ESA:**
  - Registration review actions (~50-60/yr)
  - New chemical registrations (~10-12/yr)
  - New use registrations (~50-60/yr)
  - Section 18 Emergency Exemptions (~100/yr)
  - Section 24(c) Special Local Need (SLN) registrations (~200/yr)
- **Nationwide consultations must consider direct/indirect effects to 1850 listed species and 600+ designated critical habitats**

# NAS Report Implementation



- Released on April 30, 2013
- Developed in response to a joint request by EPA, NMFS, FWS, and USDA in 2011 to address scientific areas of disagreement
- Recommended 3-step process that integrates ecological risk assessment methods with ESA Section 7 consultations
- Goal: unified interagency approach with agreement on process across all steps
- Multiple interagency workshops where interim methods for EPA's BEs (Steps 1 and 2) have been developed
- Several stakeholder meetings held to engage public on potential refinements
- Interim methods need streamlining to meet available resources
- Final BEs for chlorpyrifos, diazinon, and malathion released in January 2017

# NAS Report Implementation

- The **Biological Evaluation** (BE) determines whether registered pesticides adversely affect one or more individuals of a listed species and/or their designated critical habitats
  - Step 1 [“No Effect/May Affect” Determination]
  - Step 2 [“Not Likely to Adversely Affect (NLAA)/Likely to Adversely Affect (LAA) Determination]
- The **Biological Opinion** (BiOp) determines whether the registration of a pesticide is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its designated critical habitat
  - Step 3 [“Jeopardy/No Jeopardy” Determination and “Adverse Modification/No Adverse Modification” Determination]

**Endangered  
Species Act**

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# Litigation and Settlement Agreements

- Settlement agreements on ESA-litigation
  - Grand Bargain resolved 4 cases to allow agencies to focus ESA compliance and NAS report implementation on nationwide effects determinations and BiOps for 5 pesticides (chlorpyrifos, diazinon, malathion, carbaryl, and methomyl)
    - Final BiOps for chlorpyrifos, diazinon and malathion due in Dec. 2017
      - Final BEs released in January 2017 (80-97% LAA determinations)
      - Services plan on releasing draft BiOps in June 2017 (an interagency Step 3 method has not yet been reached)
    - Final BiOps for carbaryl and methomyl due in Dec. 2018
  - EPA and FWS resolved 2 cases with Center for Biological Diversity (CBD) to set schedules for next 4 nationwide pesticide consultations (atrazine, glyphosate, simazine, and propazine)
    - EPA to complete final BEs in June 2020
    - FWS to complete final BiOps in June 2022
- Ongoing ESA challenges:
  - New chemical registrations (cyantraniliprole, flupyrifurone, bicyclopyrone, benzovindiflupyr, and one antimicrobial chemical (coupron couprous iodide))
  - Ellis v. Housenger (clothianidin and thiamethoxam)
  - Megasuit

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From Anita

## Stakeholder Concerns

- April 13, 2017 letter from registrants of 3 pilot OPs to political leadership of EPA and the Services requesting:
  - EPA to withdraw the BEs
  - Services to stop work on the BiOps
  - Services to modify settlement agreements to allow more time to complete consultation
- Registrants/Growers:
  - Too large and complex; inadequate comment period
  - Current methods are not sustainable
  - Do not account for taxon-specific toxicity data early enough in the process
  - Overly conservative
  - GIS layers used are too broad (for use site and species range layers)
  - Use of invalid and un-reviewed studies
  - Need to consider public health, usage data and benefits
- NGOs
  - Too large and complex
  - Generally agreed with the overall process

## Challenges

- Response to industry letter unresolved – implications for court-mandated final BiOp due dates
- Current efforts do not address resource/capacity issues within EPA and the Services. Services unable to provide staff for additional pesticide consultations (beyond the 9 pesticides mentioned above)
- Proposed interim ESA methodologies are not sustainable with current resources
- Not feasible to retroactively apply new ESA methods (once vetted) to all registration review cases and meet 2022 deadline
- Continued difficulty in resolving scientific methods with the Services
  - Different statutes: FIFRA vs. ESA
- Ongoing ESA litigation for new chemical registrations

# Current Pesticide Consultation Timeline

- **April 2013** – NAS report issued
- **November 2013** – release of interim scientific methods for implementing NAS recommendations
- **April 2016** - First draft BEs posted for public comment (chlorpyrifos, malathion, and diazinon)
- **June 2016** – 2-day stakeholder workshop
- **September 2016 to present** – Interagency workshops on BO process
- **September 2016** – Stakeholder meeting on mosquitocides uses
- **January 2017** – Final BEs for chlorpyrifos, malathion, and diazinon
- **April 2017** – Industry requests current pesticide consultations be put on hold
- **Spring 2017 (on hold)** – Release of draft BEs for carbaryl and methomyl
- **June 2017 (expected)** – Draft BOs for chlorpyrifos, malathion, and diazinon
- **December 2017** – Final BOs due for chlorpyrifos, malathion, and diazinon
- **December 2018** – Final BOs due for carbaryl and methomyl